

**Notice of Allowability**

Application No.

09/529,043

Applicant(s)

EIKMANNS ET AL.

Examiner

David J. Steadman

Art Unit

1656

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 3/29/07.
2. ☒ The allowed claim(s) is/are 107, 108 and 122-124.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

### ***Status of the Application***

- [1] Claims 107-108 and 122-124 are pending in the application.
- [2] Applicant's amendment to the claims, filed on 3/29/07, is acknowledged. This listing of the claims replaces all prior versions and listings of the claims.
- [3] Applicant's arguments filed on 3/29/07 in response to the Office action mailed on 2/6/07 have been fully considered and the rejection under 35 U.S.C. 103(a) is withdrawn.
- [4] In a telephone conversation with Mr. Jonathan Myers on 4/20/07, the examiner noted that the remarks filed on 1/29/02 indicate that a marked-up copy of the substitute specification was attached, however, the examiner could not locate this document. Mr. Myers agreed to FAX a copy of this document for scanning into the application file.
- [5] In a telephone conversation with Mr. Jonathan Myers on 4/25/07, it was brought to Mr. Myers' attention that the 10/4/97 filing date listed on the 19743894.6 foreign priority document filed on 4/3/02 did not correspond with the 11/4/97 filing date listed on the 19743894.6 foreign priority document filed on 1/29/02. It was concluded that the 10/4/97 date appears to be correct and the 11/4/97 date is a typographical error.

### ***Examiner's Amendment to the Specification***

- [6] An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

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by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

[7] The application has been amended as follows: Please enter the sequence listing filed on 1/29/02 into the specification of this application.

### ***Reasons for Allowance***

[8] The following is an Examiner's statement of reasons for allowance. The claims are drawn to a pVWEX1pyc vector in *C. glutamicum* strain DG52-5, deposited as DSM 12893. According to the deposit receipt filed on 3/1/05, the microorganism has been deposited under the terms of the Budapest Treaty. Further, applicant's representative has provided a statement that the deposit will be irrevocably and without restriction or condition released to the public upon the issuance of a patent (3/1/2005 response at p. 6).

As noted in a prior Office action, it is the examiner's position that claims drawn to a vector comprising a nucleic acid encoding SEQ ID NO:2 – including the nucleic acid of SEQ ID NO:1, a host cell transformed with said vector, and a method for microbial amino acid production are anticipated or obvious in view of the prior art of record. However, the instant claims have been amended to limit the vector to a "pVWEX1pyc vector" (see Figure 2). Claims 122-123 are drawn to a method of microbially-producing L-amino acids of the aspartate and/or glutamate families by culturing a microorganism transformed with vector pVWEX1pyc. It is noted that the "aspartate family" or "glutamate family" of L-amino acids is a designation used to indicate a group of L-amino acids,

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including L-aspartate and L-glutamate, respectively, and those that are produced using aspartate or glutamate as a precursor. See Cohen et al., *J. Bacteriol* 99:791-801, 1969, particularly Figure 1 at p. 792.

In this case, the examiner has found no teaching or suggestion in the prior art directed to a vector as encompassed by claim 107. Therefore, the claimed invention is allowable over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Steadman whose telephone number is 571-272-0942. The examiner can normally be reached on Monday to Friday, 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Steadman, Ph.D.  
Primary Examiner  
Art Unit 1656